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What to do if a child tells you of sexual abuse

Understanding the Law



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Understanding the Law

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This brochure was prepared for teenagers and adults who are in contact with children. It is a general guide intended to help you respond to child sexual abuse and understand the legal process, and provides information about Canada's child sexual abuse legislation. It does not replace legal advice.

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CONTENTS

Good touching and sexually abusive touching	1
If you suspect sexual abuse	3
What happens when you call the authorities?	5
Children as witnesses	7
Sexual assault and sexual abuse: <i>Crimes against children</i>	9
Consent: <i>Can young people under 18 legally consent to sexual activity?</i>	11
Punishment for sexual assault and sexual abuse crimes	13
How to find support services	14
Responding to child sexual abuse	15

Good Touching and Sexually Abusive Touching

Hugging and touching are normal expressions of friendship, team spirit, love and affection -- they make us feel good about ourselves and others. But there are

individuals who exploit children for sexual pleasure or gratification. This is a crime.

The sexual abuse of children and young people can occur as a single incident or inappropriate sexual behaviour that happens over a period of time. It usually involves the touching of a child's sexual parts by a teenager or an adult and may also include intercourse.

Today, children across Canada are learning the difference between good touching and sexually abusive touching, and between good secrets and secrets about sexual abuse. Both are important for children to know in order to protect themselves. Children are also being encouraged to tell someone if they feel unhappy or upset by the way someone has touched them.

You could be the person a child turns to for help. Be prepared. The suggestions outlined in this booklet, and the information it gives on the legal process, can help you to respond.

Be Sensitive to Changes in a Child's Behaviour

Children who are sexually abused are usually afraid to tell anyone exactly about what is happening to them. There are several reasons for this.

Many children who are victims of sexual abuse are told to keep what happened a secret. In most cases, they are bribed, intimidated or threatened. In some cases, the offender even uses physical force in efforts to keep the child from telling. To these children the secret of sexual abuse is very real, and the demand for silence is accepted in fear of what may happen. In many cases, the offender is a member of the child's family or someone the child knows. Often the child feels guilty about the sexual abuse and so may fear the reaction of the person to whom the disclosure is made.

We can help the children in our care by being sensitive to changes in their behaviour.

When children have a problem or are upset about something, they may show it by acting out of character. These changes in a child's behaviour **may** indicate that a child has been sexually abused:

- withdrawal, isolating herself or himself from others
- reluctance to go to a particular place or to go with a particular person
- acting out sexual behaviour
- using words about sex that a child is not likely to know, or describing sexual activity
- exhibiting self-destructive behaviour such as running away, hurting others, or taking drugs or alcohol.

If You Suspect Sexual Abuse

The best way to respond to a child who you suspect may have been sexually abused is to listen carefully to what the child says and to be attentive to his or her behaviour.

Show your concern. Ask if anything is the matter. But do not press for an answer. Let the child know that you are ready to listen at any time.

If a Child Tells You about Sexual Abuse ... Support the Child!

If a child discloses sexual abuse, there are important steps to follow:

talk to the child in private When a child discloses sexual abuse, take the child to a quiet place. Allow the child to tell what happened in his or her own words, without pressing for details. It is important not to "interview" the child. Detailed questioning is best handled by persons trained to do this.

listen to the child Accept what the child is telling you even if it is difficult for you to believe the identity of the alleged abuser, or that sexual abuse took place. Comfort the child by saying that it is good that you were told.

remain calm and don't overreact You may feel angry. If so, make it clear that your anger is not directed toward the child. Tell the child that what happened is not his or her fault -- that he or she is not to blame. Let the child know that the alleged abuser has done something wrong and needs help.

reassure the child Talking to someone about what happened is likely to cause some degree of anxiety for the child.

Your supportive reaction will help the child cope with any feelings of confusion or guilt. Let the child know that you will do something to help. Depending on the child's age, you may be able to explain that you will talk to other people who know what to do in these situations, and that they will help too.

call for assistance immediately The police, the local child protection agency or a similar social service organization in your community are prepared to help at any time of day or night. They have staff members who are specially trained to deal with complaints of child sexual abuse.

It is important to call **as soon as possible**. Depending on the provincial or territorial laws where you live, you may also have a legal obligation to report the incident immediately. Even if you think the incident is minor, report it anyway.

WHAT IF YOUR CHILD HAS BEEN SEXUALLY ABUSED?

You may be so angry that you will find it difficult to follow the suggestions in this booklet. Although reactions of fear or anger are normal, they can also frighten your child. Try to remain calm and communicate to your child that you are not upset or angry with him or her.

Listen carefully to what your child is saying but resist the instinct to try to find out all the details. Your child needs comfort since he or she may be emotionally upset or confused about what has happened.

Even if you know who the alleged offender is, do not take the law into your own hands by confronting the person. This could jeopardize any investigation or court case that may arise. Call the police or social service agency in your community **immediately**. They can take the necessary action to protect your child.

What Happens When You Call the Authorities?

When you call, make it clear that you are reporting sexual abuse. This will help ensure that your call is referred to the appropriate services. Reports of child sexual abuse are always confidential. The name of the person reporting a suspected incident of child sexual abuse will not be given to anyone during the investigation.

The Investigation

After your call, there will be an initial investigation either by the police or the child protection agency. In some parts of Canada, special units of social workers and police officers work together on child sexual abuse cases.

These professionals will talk to the child. Family members, the person who reported the incident and the alleged offender may also be interviewed.

The police and child protection workers are trained to collect evidence and to determine what really happened. They are responding to a serious complaint, and they must ensure that information is gathered carefully.

The police look for facts that prove a crime occurred and that can be used as evidence in court. If there is sufficient evidence, and the alleged offender can be located, criminal charges can be laid.

Whether or not charges are laid, a social service agency can provide protection to the child as well as counselling services and financial support to the child and family.

If charges are laid, the accused has two options. If the accused pleads guilty, the court will review the case and decide on a sentence. If the accused pleads not guilty, there will be a trial. It is possible that the person who reported the sexual abuse incident will be required to testify at the trial.

In some serious cases, a preliminary inquiry will be held before the trial. At this hearing, the judge will examine the case and decide if there is enough evidence to proceed with the trial. The child and other witnesses may have to testify at this hearing.

What if the Alleged Offender Is Under 18 ?

If the accused is a young person over 12 years of age but under 18, then the case will be dealt with under the rules of the *Young Offenders Act*. This law holds young people responsible for their actions, but provides special procedures and different punishments. If a trial is necessary, it is usually held in youth court.

Children as Witnesses

Children can be witnesses in court. Before telling the court what happened, they will be

asked to swear to tell the truth in the same way that adult witnesses are.

If the child is under 14, the judge will ask questions to find out if the child understands what

swearing to tell the truth means. If the child does not understand this concept but can talk about what happened, he or she can be a witness on promising to tell the truth. However, a child who cannot talk about what happened and who does not understand what telling the truth means cannot be a witness at a trial.

At the Trial

keeping names out of the news

If the accused is charged with a sexual offence, the victim, any witness under the age of 18 or the crown prosecutor can ask for a court order prohibiting the publication or broadcasting of any information that could disclose the identity of the child victim or witness. Once such a request is made, the judge must make the court order.

videotaped evidence

During the trial, evidence of the alleged crime will be presented to the judge, or in some cases, the judge and jury. Part of the evidence could be a videotape of the interview with the child victim made by the police or child protection agency during their investigation.

Videotaping a child's evidence early in the investigation can mean that the child will not have to tell people what happened over and over again during the investigation. However, the child will have to testify at the trial to confirm the contents of the videotape.

seeing the accused in court

The law also says that the child's testimony can be presented outside the courtroom, as long as the judge, the jury, if there is one, and the accused can watch the testimony by means of closed-circuit television.

The accused must be able to communicate with his or her lawyer at all times while the child is giving testimony.

A screen or any other device also may be used in the courtroom so that a child can give evidence without seeing the accused.

However, closed-circuit television and screens may not yet be available in all courtrooms across Canada.

proving guilt

No matter how the child's evidence is presented, it will be considered in the same way as that of any other person giving evidence at a trial. This means that in order to establish guilt, no other evidence need be presented to confirm the child's testimony.

The defence counsel will, however, have an opportunity to cross-examine the child.

the decision

The judge will then decide how much weight should be given to all the evidence presented at the trial.

If there is a jury, the judge will assist the jury in determining the weight to be given to the evidence and will explain to the jurors the aspects of the law that apply.

Sexual Assault and Sexual Abuse: Crimes Against Children

**Sex Without Consent
is Always a Crime**

It is a crime to kiss, fondle or have any sexual contact, including sexual intercourse, with anyone of any age against his or her will. This is **sexual assault** and it is a crime.

The *Criminal Code* also includes other crimes of sexual abuse and exploitation of children and young people under 18 years of age. They are:

sexual interference It is a crime for anyone to touch a young person under 14 for a sexual purpose.

invitation to sexual touching It is a crime to encourage a child under 14 to touch his or her own body or someone else's body for a sexual purpose.

sexual exploitation Children have special relationships with some people like parents, teachers, coaches, and babysitters. Children are taught to trust them and to respect their authority. Often, children are dependent on these people for support and shelter.

It is a crime for a person in a position of trust or authority over a young person 14 years of age but under 18, or a person upon whom a child in this age group is dependent, to engage in sexual activity with the young person.

"Sexual activity" includes touching a young person for a sexual purpose and inviting a young person to touch his or her own body or someone else's body for a sexual purpose.

For all three crimes, "touching" means touching with a part of the body or with an object.

In addition to sexual assault and the three crimes described above, sexual abuse crimes include indecent exposure, bestiality and incest.

Consent: *Can Young People Under 18 Legally Consent to Sexual Activity?*

Sexual activity without consent is a crime. But what if there is consent? Can young people under 18 ever legally consent to sexual activity? The answers to

these two questions are important to the understanding of the law on child sexual abuse.

No crime takes place when two adults agree to sexual activity in private. The law says that adults are able to give their consent. But because young people under 18, and especially children under 14, do not always understand the

consequences of their actions and are not fully independent, the law says that in some cases their consent is not legal.

That is why, sometimes, even if a young person has

agreed to sexual activity, the other person involved has still committed a crime.

So, a person charged with sexual abuse or exploitation cannot use as a defence the fact that the young person consented to the sexual activity. Nor is it a defence for the accused to say that the young person seemed older. The accused must prove that he or she took all reasonable steps to find out the young person's age.

When Is a Young Person's Consent Legal?

children under 12 Children under 12 can never give legal consent to sexual activity.

children 12 or more but under 14 In general, children 12 or more but under 14 are not considered old enough to consent to sexual activity. But there is an exception. No crime is committed if two young people consent to sexual activity and the older teenager is still under 16. As well, there must be less than two years' age difference between the two.

Even if a young person in this age group consents to sexual activity with someone less than two years older, the consent is not legal if one of them is in a position of trust or authority over the other -- for example, a babysitter -- or if a relationship of dependency exists, such as a young person looking after a disabled teenager.

young people 14 or more but under 18 Young people 14 or more but under 18 can legally consent to sexual activity. However, the consent is not legal and the crime of sexual exploitation occurs if one of those involved is in a position of trust or authority over the other, or is a person upon whom the other is dependent.

Punishment for Sexual Assault and Sexual Abuse Crimes

Depending on the specific crime, the punishment for a person found guilty of sexual assault or a child sexual abuse crime can range from a discharge, suspended sentence, probation or fine to a maximum sentence of life in prison.

BUYING SEX FROM SOMEONE UNDER 18

There are now severe penalties for customers of prostitutes who are under the age of 18. Anyone who tries to buy or buys, with money or other benefits, the sexual services of someone under 18, is committing a serious crime and can be punished by up to five years in prison.

It is not a defence to this crime for the accused to say that he or she believed the prostitute was over 18. The person accused of the crime has to prove that all reasonable steps were taken to find out that the prostitute was over 18 years of age.

HOW TO FIND SUPPORT SERVICES

Police forces and many organizations across Canada are working to help victims and to prevent sexual abuse. For more information on these services, contact the police, child protection agency, sexual assault centre or distress centre in your community. Such organizations are usually included among the emergency listings on the first page of your telephone directory.

IF YOU WERE SEXUALLY ABUSED AS A CHILD

Sexual abuse of children is not a new problem, but it is a crime that more people are able to talk about today. And that is a good beginning.

Many survivors of childhood sexual abuse continue, as adults, to experience personal difficulties related to the abuse. Many have benefitted from counselling or self-help groups. If you are still trying to come to grips with the emotional impact of a past experience, there are professional counselling agencies, self-help groups and other community groups that can assist you. This help can be found through child protection agencies, social service agencies, distress centres, sexual assault centres, hospitals, mental health centres, churches, the United Way or any other service that deals with families and children.

Survivors of sexual abuse are strongly encouraged to report past incidents of sexual abuse and identify the alleged offender, especially if he or she still has direct contact with children.

RESPONDING TO CHILD SEXUAL ABUSE

The sexual abuse of children and young people is a crime that can be reduced by educating both children and adults.

As responsible individuals, we can help children in our care by being sensitive to the signs of sexual abuse and by responding appropriately when a child seeks our help.

In addition to this brochure, the Department of Justice has published **The Secret of the Silver Horse**, a story that tells children the difference between a good secret and a secret about sexual abuse. For more information on child sexual abuse, or for copies of either publication, please contact:

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